

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION DIV: "AF"

CASE NO.: 2018CA010541AXX

JOHN P. WOODWARD,  
CHRIS WOODWARD,  
And  
ROBERT C. WOODWARD,  
Plaintiffs,

vs.

TIMOTHY J. MORELL, in his  
capacity as Personal Representative of  
the Estate of Mildred W. Olson,  
Defendant.

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**ORDER GRANTING DEFENDANT'S RENEWED MOTION  
FOR SUMMARY JUDGMENT, DENYING PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT, DENYING PLAINTIFFS' MOTION  
TO STRIKE, AND ENTERING FINAL SUMMARY JUDGMENT FOR DEFENDANT**

**THIS CAUSE** came before the Court on December 9, 2019 on (i) Defendant's Renewed Motion for Summary Judgment on Plaintiffs' Amended Complaint (DE #46); (ii) Plaintiffs' Motion for Summary Judgment (DE #52), and (iii) Plaintiffs' Motion to Strike Defendant's Renewed Motion for Summary Judgment (DE #66). The Court, after having carefully reviewed the Motions, attached Exhibits, pleadings, and other papers on file, having heard argument of counsel, and being otherwise fully advised in the premises, finds as follows:

1. The Woodward Nephews College and Savings Incentive Program ("the Incentive Program"), dated November 27, 1991, attached to Plaintiffs' Amended Complaint as Exhibit "A," (DE #8) is clear and unambiguous, as conceded by all parties. Under longstanding Florida precedent, the Court has a legal obligation to give effect to the clear and unambiguous terms of a written contract. Plaintiffs' affidavits in support or opposition to summary judgment cannot vary,

alter, or otherwise re-write the clear and unambiguous terms of the Incentive Program;

2. Plaintiffs claim that they are now entitled to receive money under the Incentive Program, based on long ago completing their freshman, sophomore, junior, and senior years of college. However, Plaintiffs' finished college **13 or more years before filing suit**. After completing each year of college, Plaintiffs failed to make any decision under the Incentive Program and also failed to file a lawsuit on any claimed funds under the Incentive Program within five (5) years of the date each installment was due. Each payment due under the Incentive Program, as conceded by Plaintiffs at argument, automatically vested upon each Plaintiff graduating from each year of college. Consequently, pursuant to Section 95.11(2)(b), Florida Statutes, the statute of limitations expired five (5) years after the date each installment payment became due under the Incentive Program. *Isaacs v. Deutsch*, 80 So. 2d 657, 660 (Fla. 1955) (“[I]n a case such as this, as in the case of an obligation payable by instalments, the statute of limitations runs against each instalment from the time it becomes due; that is, from the time when an action might be brought to recover it.”) (quotation and citation omitted); *Access Ins. Planners, Inc. v. Gee*, 175 So. 3d 921, 924–25 (Fla. 4th DCA 2015) (“Where a contract is divisible, breaches of its severable parts give rise to separate causes of action and the statute of limitations will generally begin to run at the time of each breach.”) (quotations and citation omitted); *Greene v. Bursey*, 733 So. 2d 1111 (Fla. 4th DCA 1999) (holding statute of limitations had run on some monthly installment payments under a promissory note, but not on others); *Bishop v. State, Div. of Ret.*, 413 So. 2d 776, 778 (Fla. 1st DCA 1982) (“It is well established that in the case of debts payable by installments, the statute of limitations runs against each installment from the day it becomes due.”) (citation omitted);

3. The chart below provides the undisputed year that each Plaintiff graduated from each year of college, as well as the year the statute of limitations expired for each installment under the Incentive Program (in parentheses):

	<u>John</u>	<u>Robert</u>
Freshman Year	1996 → (2001)	1990 → (1995)
Sophomore Year	1997 → (2002)	1992 → (1997)
Junior Year	1998 → (2003)	1993 → (1998)
Senior Year	2005 → (2010)	1997 → (2002)

4. Plaintiffs' were not entitled to wait until death closed the lips of their aunt Mildred W. Olson—well over a decade after each Plaintiff graduated from college—to file suit. *Thrasher v. Ocala Mfg. Ice & Packing Co.*, 15 So. 2d 32 (Fla. 1943);

5. The arguments set forth in Defendant's (a) Renewed Motion for Summary Judgment on Plaintiffs' Amended Complaint, (b) Defendant's Response in Opposition to Plaintiffs' Motion for Summary Judgment (DE #68), and (c) Defendant's Reply in Support of its Renewed Motion for Summary Judgment on Plaintiffs' Amended Complaint (DE #70) are well-taken and the Court recognizes the validity of these arguments; and

6. For the foregoing reasons and the additional reasons stated by the Court at the conclusion of the December 9, 2019 hearing, Defendant is entitled to the entry of final summary judgment in its favor on the claims set forth in Plaintiffs' Amended Complaint. **WHEREFORE**, it is hereby **ORDERED and ADJUDGED** as follows:

1. Plaintiffs' Motion for Summary Judgment are **DENIED**;
2. Plaintiffs' Motion to Strike is **DENIED**;
3. Defendant's Renewed Motion for Summary Judgment on Plaintiffs' Amended Complaint is **GRANTED**. The Court hereby enters Final Summary Judgment for Defendant. It that is further

**ORDERED and ADJUDGED** Plaintiffs, JOHN P. WOODWARD and ROBERT C. WOODWARD, shall take nothing from this action and recover nothing against Defendant, TIMOTHY J. MORELL, in his capacity as Personal Representative of the Estate of Mildred W. Olson. It is further

**ORDERED and ADJUDGED** that the Court reserves jurisdiction for the purpose of determining Defendant's entitlement to, and amount of, attorneys' fees and costs in this case.

**DONE and ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida, this 14 day of January, 2020.



JOHN S. KASTRENAKES  
Circuit Judge

**COPIES FURNISHED:**

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